



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

NOV 20 2008

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Jack L. Richardson, IV, Esq.  
Richardson & Richardson, PSC  
10345 Linn Station Road, Suite 100  
Louisville, KY 40223

Re: MUR 5965  
Gregory E. Fischer; Fischer for U.S. Senate  
and Ruth Payne, in her official capacity as  
treasurer; Dant Clayton Corporation

Dear Mr. Richardson:

This is in reference to the complaint you filed with the Federal Election Commission on January 16, 2008 concerning Gregory E. Fischer, Fischer for U.S. Senate and Ruth Payne, in her official capacity as treasurer (the "Committee"), and Dant Clayton Corporation (collectively, "Respondents"). Based on that complaint and on information provided by Respondents, on November 6, 2008 the Commission found there was no reason to believe that Respondents violated 2 U.S.C. § 441b(a). On the same date, the Commission dismissed the allegation that the Committee violated 2 U.S.C. § 434(b) by failing to report in-kind contributions from Iceberg Ventures, LLC. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analyses, which more fully explain the Commission's findings, are enclosed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to

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seek judicial review of the Commission's dismissal of this action. *See* 2 U.S.C. § 437g(a)(8).

Sincerely,



Susan L. Lebeaux  
Acting Deputy Associate General  
Counsel for Enforcement

Enclosures:

Factual and Legal Analysis for Gregory E. Fischer, Fischer for U.S. Senate and Ruth Payne,  
in her official capacity as treasurer

Factual and Legal Analysis for Dant Clayton Corporation

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENTS: Gregory E. Fischer**

**MUR: 5965**

4 **Fischer for U.S. Senate and Ruth Payne,**  
5 **in her official capacity as treasurer**

6  
7 **I. INTRODUCTION**

8  
9 **This matter was generated by a complaint filed with the Federal Election Commission**  
10 **(“Commission”) by Jack L. Richardson, IV. See 2 U.S.C. § 437g(a)(1).**

11 **Gregory E. Fischer, the Chief Executive Officer of Dant Clayton Corporation (“Dant**  
12 **Clayton”), declared his intention to run in Kentucky’s 2008 Democratic primary for a United**  
13 **States Senate seat on his campaign website on January 16, 2008. The complaint alleges that**  
14 **Fischer and Fischer for U.S. Senate and Ruth Payne, in her official capacity as treasurer (“the**  
15 **Committee”), accepted impermissible corporate in-kind contributions during December 2007 in**  
16 **the form of corporate resources utilized in connection with Fischer’s Senate race, specifically the**  
17 **use by Fischer of his corporate e-mail account to seek finance staff should he decide to run, and**  
18 **the inclusion in an attachment to his e-mail of the corporate e-mail address of a Dant Clayton**  
19 **employee for receipt of resumes from persons interested in applying. The complaint also states**  
20 **that Fischer’s limited liability company, Iceberg Ventures, LLC (“Iceberg Ventures”), had**  
21 **previously paid for and registered several website domain names used in connection with his**  
22 **Senate candidacy, which might require Fischer’s campaign to report in-kind contributions from**  
23 **Iceberg Ventures.**

24 **In their joint response to the complaint, Fischer and the Committee do not deny the**  
25 **alleged e-mail activities, but maintain that they did not constitute in-kind corporate contributions.**  
26 **Fischer and the Committee did not address the registration of domain names by Iceberg**  
27 **Ventures.**

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1     **II.     FACTS**

2             The complaint is based on two blog website reports, which are attached thereto; one of  
3     the reports contains a copy of an e-mail and job description that Fischer sent from his Dant  
4     Clayton corporate e-mail account on December 24, 2007, addressed to “undisclosed recipients.”  
5     In the e-mail, Fischer states “[w]hile I have not made a final decision re the US Senate run, we  
6     are preparing for a possible announcement in January.” Fischer further states that since  
7     “[f]undraising is one of the first activities to kick into gear,” paid finance staff and a Finance  
8     Director are needed. He asks the e-mail recipients to think about persons who might qualify and  
9     attaches to his e-mail a job description for the positions.<sup>1</sup> The attachment concludes: “To apply,  
10    e-mail cover letter and resume to: [csadler@dantclayton.com](mailto:csadler@dantclayton.com).” It appears that Cindy Sadler, a  
11    Dant Clayton employee, is the “csadler” referenced in the e-mail attachment. *See*  
12    <http://center.spoke.com/info/p9IbWzr/CindySadler>.

13            The complaint also states, based on an attached blog website report, that Fischer’s limited  
14    liability company, Iceberg Ventures, is the owner of several internet domain names connected  
15    with his Senate candidacy. The blog website report states, “[u]tilizing his LLC to do work for  
16    his campaign is fine, as long as it is reported to the FEC s an in-kind contribution that does not  
17    exceed \$1,000.” Available at [www.pageonekentucky.com](http://www.pageonekentucky.com). We have been able to confirm that  
18    Iceberg Ventures, which is not incorporated, registered the domain name [www.gregfischer.com](http://www.gregfischer.com),  
19    used by Fischer’s campaign, with [www.godaddy.com](http://www.godaddy.com). According to godaddy’s website, its  
20    registration fee for .com domain names recently has been discounted from \$9.99 to \$6.85 per

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<sup>1</sup>     The attached job description is headed “DEMOCRATIC CAMPAIGN STAFF NEEDED,” subheaded “HIRING FINANCE STAFF IN CAMPAIGN TO BRING FRESH IDEAS TO THE US SENATE,” and states that the responsibilities include “[t]raveling and working directly with the Candidate and Friends of the Candidate.”

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1 year. See [http://www.godaddy.com/gdshop/compare/gdcompare\\_domain.asp?isc=gext1003b](http://www.godaddy.com/gdshop/compare/gdcompare_domain.asp?isc=gext1003b)  
2 (May 19, 2008).

3 **III. ANALYSIS**

4 **A. Corporate Contributions**

5 The Fischer/Committee joint response asserts that because Fischer was not yet a  
6 “candidate” within the meaning of 2 U.S.C. § 431(2) when the activity took place, the ban on  
7 corporate contributions was not applicable.<sup>2</sup> It further maintains that even if Fischer was a  
8 “candidate” at the relevant time, “the exception [in 11 C.F.R. § 114.9(a)] for the ‘occasional,  
9 isolated, or incidental’ use of corporate resources by volunteers would apply to a volunteer’s  
10 receipt of resumes and other work performed by Dant Clayton employees voluntarily and on  
11 their own time.” Fischer/Committee Response at 2.

12 The Act prohibits corporations from making contributions or expenditures from their  
13 general treasury funds in connection with any election of any candidate for Federal office.

14 Contributions include “any gift, subscription, loan, advance, or deposit of money or anything of  
15 value made by any person for the purpose of influencing any election for Federal office.”

16 2 U.S.C. § 431(8)(A)(i). The Act defines expenditures as “any purchase, payment distribution,  
17 loan, advance, deposit, or gift of money or anything of value made by any person for the purpose  
18 of influencing any election for Federal office.” 2 U.S.C. § 431(9)(A)(i). The term “anything of  
19 value” includes all “in-kind contributions.” 11 C.F.R. § 100.7(a)(1)(iii)(A). See 2 U.S.C.

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<sup>2</sup> Whether Fischer was a candidate or not at the time of the activities in question, he was not permitted to accept corporate contributions even though he had not yet become a “candidate.” Sections 101.2 and 101.3 of the Commission’s regulations provide that when an individual becomes a candidate, all funds received or payments made in connection with his or her campaign prior to becoming a candidate are considered contributions or expenditures under the Act and must be disclosed in the first report filed by the candidate’s authorized committee. Because funds or payments made in connection with a pre-candidacy campaign may later be subject to federal restrictions and reporting requirements, they must be federally compliant. See also 11 C.F.R. §§ 100.72(a) and 100.31.

§ 441b(b)(2).

While a campaign's use of corporate resources may be deemed to be an in-kind contribution and, thus, an illegal corporate contribution in violation of 2 U.S.C. § 441b, section 114.9(a)(2) of the Commission's regulations contains a safe harbor that describes certain uses of corporate facilities to be "occasional, isolated, or incidental," and, if qualifying as such, not prohibited corporate contributions. Individual volunteer activity that does not exceed one hour per week or four hours per month, regardless of whether the activity is undertaken during or after normal working hours, as well as voluntary individual Internet activities, as set forth in 11 C.F.R. § 100.94, fall within the safe harbor, provided that the activity does not prevent an individual from completing the normal amount of his or her compensated work, does not increase the overhead or operating costs of the corporation, and is not performed under coercion. *See* 11 C.F.R. § 114.9(a)(2)(ii). *See also Explanation and Justification for Internet Communications*, 71 Fed. Reg. 18589, 18611 (April 12, 2006) ("E&J").

Section 100.94, referenced in this safe harbor provision, exempts individual volunteer Internet activity, whether independent or in coordination with a candidate, from the definition of "contribution." The exemption applies to an individual's uncompensated personal services related to Internet activities, which includes sending or forwarding messages, providing a hyperlink or other direct access to another person's website, paying a nominal fee for the use of another person's website, and any other form of communication distributed over the Internet. The exemption also covers an individual's uncompensated use of equipment or services, including computers, software,

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1 domain names, and any other technology that is used to provide access to or use of the  
2 Internet, regardless of who owns the equipment and services.

3 Based on the available information, it appears that the activities in issue fall within the  
4 scope of the safe harbor provision. The complaint offers no indication that Fischer did anything  
5 but use his company's e-mail account on behalf of his campaign (and he did so at 12:52 A.M. on  
6 December 24, 2007, which means that he likely wrote and sent it on his own time, not Dant  
7 Clayton's), and ask individuals interested in joining the campaign to send resumes to another  
8 Dant Clayton employee's e-mail address. These activities are encompassed in section  
9 114.9(a)(2)'s safe harbor provision. *See* E&J at 18596 ("there is virtually no cost associated with  
10 sending e-mail communications, even thousands of e-mails to thousands of recipients...."). Nor  
11 does the complaint provide any indication that Dant Clayton employees, including Ms. Sadler,  
12 engaged in activities on behalf of Fischer's campaign that were outside of section 114.9(a)(2)'s  
13 safe harbor provision. Thus, the use of Dant Clayton's corporate resources does not constitute an  
14 in-kind corporate contribution.

15 Therefore, the Commission finds no reason to believe that Gregory E. Fischer and  
16 Fischer for U.S. Senate and Ruth Payne, in her official capacity as treasurer, violated 2 U.S.C.  
17 § 441b(a).

18 **B. In-kind contribution from Iceberg Ventures**

19 The complaint also alleges that the Committee may have been required to report the  
20 costs incurred by Fischer's limited liability company, Iceberg Ventures, for registering  
21 eight domain names in anticipation of a possible Senate run, one of which was used as the  
22 official campaign website. Fischer and the Committee did not respond to this allegation.

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1 Authorized committees are required to report and identify each person who makes  
2 a contribution or expenditure with an aggregate value in excess of \$200 within an election  
3 cycle, as well as to report unitemized contributions and operating expenditures. 2 U.S.C.  
4 § 434(b), 11 C.F.R. § 104.3. In-kind contributions are reported as both receipts and  
5 expenditures. 11 C.F.R. § 104.13. However, because the current annual cost of registering  
6 the domain names is under \$10.00, even if the campaign utilized all eight domain names  
7 allegedly registered to Iceberg Ventures, it appears likely that the aggregate cost for the  
8 eight registered domain names would be below the \$200 level for itemized in-kind  
9 contributions or expenditures, and therefore, too low to justify using the Commission's  
10 limited resources to investigate whether they were included in the unitemized receipts and  
11 operating expenditures on the Committee's detailed summary page, or to otherwise pursue  
12 the matter.

13 Therefore, the Commission dismisses the portion of the complaint alleging that  
14 Fischer for U.S. Senate and Ruth Payne, in her official capacity as treasurer, may have  
15 violated 2 U.S.C. § 434(b) by failing to report in-kind contributions from Iceberg Ventures,  
16 LLC. *See Heckler v. Chaney*, 470 U.S. 821 (1985).



1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENT: Dant Clayton Corporation**

**MUR: 5965**

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6 **I. INTRODUCTION**

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8 This matter was generated by a complaint filed with the Federal Election Commission  
9 (“Commission”) by Jack L. Richardson, IV. *See* 2 U.S.C. § 437g(a)(1).

10 Gregory E. Fischer, the Chief Executive Officer of Dant Clayton Corporation (“Dant  
11 Clayton”), declared his intention to run in Kentucky’s 2008 Democratic primary for a United  
12 States Senate seat on his campaign website on January 16, 2008. The complaint alleges that  
13 Dant Clayton made impermissible corporate in-kind contributions during December 2007 in the  
14 form of corporate resources utilized in connection with Fischer’s Senate race, specifically the use  
15 by Fischer of his corporate e-mail account to seek finance staff should he decide to run, and the  
16 inclusion in an attachment to his e-mail of the corporate e-mail address of a Dant Clayton  
17 employee for receipt of resumes from persons interested in applying. In its response, Dant  
18 Clayton does not deny the alleged e-mail activities, but maintains that they did not constitute in-  
19 kind corporate contributions.

20 **II. FACTS**

21 The complaint’s allegation is based on a blog website report, which is attached thereto;  
22 the report contains a copy of an e-mail and job description that Fischer sent from his Dant  
23 Clayton corporate e-mail account on December 24, 2007, addressed to “undisclosed recipients.”  
24 In the e-mail, Fischer states “[w]hile I have not made a final decision re the US Senate run, we  
25 are preparing for a possible announcement in January.” Fischer further states that since  
26 “[f]undraising is one of the first activities to kick into gear,” paid finance staff and a Finance

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Director are needed. He asks the e-mail recipients to think about persons who might qualify and attaches to his e-mail a job description for the positions.<sup>1</sup> The attachment concludes: "To apply, e-mail cover letter and resume to: [csadler@dantclayton.com](mailto:csadler@dantclayton.com)." It appears that Cindy Sadler, a Dant Clayton employee, is the "csadler" referenced in the e-mail attachment. See <http://center.spoke.com/info/p9IbWzr/CindySadler>.

### III. ANALYSIS

Dant Clayton's response asserts that because Fischer was not yet a "candidate" within the meaning of 2 U.S.C. § 431(2) when the activity took place, the ban on corporate contributions was not applicable.<sup>2</sup> Dant Clayton further maintains that even if Fischer was a "candidate" at the relevant time, if its volunteer employees "used corporate resources, it is Dant Clayton's belief that the use of those resources was 'occasional, isolated or incidental' within the meaning of 11 C.F.R. § 114.9(a) and would not be a contribution." Dant Clayton response at 1-2.

The Act prohibits corporations from making contributions or expenditures from their general treasury funds in connection with any election of any candidate for Federal office. Contributions include "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i). The Act defines expenditures as "any purchase, payment distribution,

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<sup>2</sup> Whether Fischer was a candidate or not at the time of the activities in question, he was not permitted to accept corporate contributions even though he had not yet become a "candidate." Sections 101.2 and 101.3 of the Commission's regulations provide that when an individual becomes a candidate, all funds received or payments made in connection with his or her campaign prior to becoming a candidate are considered contributions or expenditures under the Act and must be disclosed in the first report filed by the candidate's authorized committee. Because funds or payments made in connection with a pre-candidacy campaign may later be subject to federal restrictions and reporting requirements, they must be federally compliant. See also 11 C.F.R. §§ 100.72(a) and 100.31.

1 loan, advance, deposit, or gift of money or anything of value made by any person for the purpose  
2 of influencing any election for Federal office.” 2 U.S.C. § 431(9)(A)(i). The term “anything of  
3 value” includes all “in-kind contributions.” 11 C.F.R. § 100.7(a)(1)(iii)(A). *See* 2 U.S.C.  
4 § 441b(b)(2).

5 While a campaign’s use of corporate resources may be deemed to be an in-kind  
6 contribution and, thus, an illegal corporate contribution in violation of 2 U.S.C. § 441b, section  
7 114.9(a)(2) of the Commission’s regulations contains a safe harbor that describes certain uses of  
8 corporate facilities to be “occasional, isolated, or incidental,” and, if qualifying as such, not  
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10 per week or four hours per month, regardless of whether the activity is undertaken during or after  
11 normal working hours, as well as voluntary individual Internet activities, as set forth in 11 C.F.R.  
12 § 100.94, fall within the safe harbor, provided that the activity does not prevent an individual  
13 from completing the normal amount of his or her compensated work, does not increase the  
14 overhead or operating costs of the corporation, and is not performed under coercion. *See*  
15 11 C.F.R. § 114.9(a)(2)(ii). *See also Explanation and Justification for Internet Communications*,  
16 71 Fed. Reg. 18589, 18611 (April 12, 2006) (“E&J”).

17 Section 100.94, referenced in this safe harbor provision, exempts individual volunteer  
18 Internet activity, whether independent or in coordination with a candidate, from the definition of  
19 “contribution.” The exemption applies to an individual’s uncompensated personal services  
20 related to Internet activities, which includes sending or forwarding messages, providing a  
21 hyperlink or other direct access to another person’s website, paying a nominal fee for the use of  
22 another person’s website, and any other form of communication distributed over the Internet.  
23 The exemption also covers an individual’s uncompensated use of equipment or services,

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1 including computers, software, domain names, and any other technology that is used to provide  
2 access to or use of the Internet, regardless of who owns the equipment and services.

3 Based on the available information, it appears that the activities in issue fall within the  
4 scope of the safe harbor provision. The complaint offers no indication that Fischer did anything  
5 but use his company's e-mail account on behalf of his campaign (and he did so at 12:52 A.M. on  
6 December 24, 2007, which means that he likely wrote and sent it on his own time, not Dant  
7 Clayton's), and ask individuals interested in joining the campaign to send resumes to another  
8 Dant Clayton employee's e-mail address. These activities are encompassed in section  
9 114.9(a)(2)'s safe harbor provision. *See* E&J at 18596 ("there is virtually no cost associated with  
10 sending e-mail communications, even thousands of e-mails to thousands of recipients...."). Nor  
11 does the complaint provide any indication that Dant Clayton employees, including Ms. Sadler,  
12 engaged in activities on behalf of Fischer's campaign that were outside of section 114.9(a)(2)'s  
13 safe harbor provision. Thus, the use of Dant Clayton's corporate resources does not constitute an  
14 in-kind corporate contribution.

15 Therefore, the Commission finds no reason to believe that Dant Clayton Corporation  
16 violated 2 U.S.C. § 441b(a).

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